

**VOLUNTARY CLEANUP CONTRACT
17-6494-NRP**

**IN THE MATTER OF
PROMENADE AT CAROLINA RESERVE, LANCASTER COUNTY
and
HUTTON INDIAN LAND, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Hutton Indian Land, LLC, with respect to the Property located at 7715 Charlotte Highway, Indian Land, South Carolina. The Property includes approximately 2.02 acres identified by portions of Tax Map Serial Number(s) 0016-00-020.00 and 0016-00-022.00. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of August 28, 2017, and any amendments thereto, by Hutton Indian Land, LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710, et seq. (2002 & Supp. 2016); the South Carolina Hazardous Waste Management Act (SCHWMA), S.C. Code Ann. §§ 44-56-10, et seq. (2002 & Supp. 2016); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq. (1994); the State Underground Petroleum Environmental Response Bank Act, (SUPERB Act), S.C. Code Ann. §§ 44-2-10, et seq. (2002 & Supp. 2016); and the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. (2008 & Supp. 2016).

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, and if not set forth therein, shall have the meaning assigned to them pursuant to the SCHWMA, the PCA, the SUPERB Act, or CERCLA.

- A. "Hutton" means Hutton Indian Land, LLC.
- B. "Beneficiaries" means Hutton's Non-Responsible Party lenders, signatories, parents, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of Hutton or its Beneficiaries.
- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the environment.

- I. "Site" means all areas where a contaminant, petroleum, or petroleum product has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel.
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Owners and Operators: The owners and operators of the Property include the following:

Tax Parcel 0016-00-020.00

Pettus, Bessie K.	Prior to 2003
Pettus, Louise, et al	2003 to 2006
Wallace Land Ventures II LLC	2006 to 2007
Cornerstone Retail, LLC	2007 to 2012
RL BB-SC CLR VI LLC (c/o Strategic Property Tax Advisors, LLC)	2012 to Present

Tax Parcel 0016-00-022.00

Pettus Estate, et al	Prior to 1980
Pettus, Mary Chandler	1980 to 2007
Baxter Health Services, Inc.	2007 to 2008
Cornerstone Retail, LLC	2008 to 2011
RL BB-SC CLR VI LLC (c/o Strategic Property Tax Advisors, LLC)	2012 to Present

B. Property and Surrounding Areas: The Property is bounded: to the south by Jim Wilson Road with a Walgreens beyond; to the west by Charlotte Highway with commercial development beyond; and to the north and east by undeveloped, partially wooded tracts. The Property is an undeveloped, partially wooded tract with shopping centers and residential development in the nearby surrounding area.

C. Investigations / Reports; Regulatory Issues: Review of a Phase I Environmental Site Assessment report produced by S&ME, Inc. and dated July 31, 2017 indicates that the property was undeveloped pasture land with several residences fronting the streets, and a commercial building located on the southwest portion of the Property adjacent to the intersection of the streets. The building was Warrior Shoppe, a gas station. Warrior Shoppe operated from the early 1930s until the late 1990s. The underground storage tanks used at the station were removed in 1999.

A release from the former tank system was reported in 1999 and is currently undergoing monitoring by the responsible party under oversight of the SCDHEC Underground Storage Tank Program. According to a February 22, 2013 Tier II Report, completed by Katawba Environmental, Inc., petroleum hydrocarbons were detected at concentrations above risk based screening levels on the Property and at off-site monitoring wells, groundwater was encountered at approximately 29 feet below land surface, and the groundwater flow direction was determined to be west. No additional recognized environmental conditions were identified on, or off, the Property.

D. Applicant Identification: Hutton is a state of Tennessee limited liability company with its principal place of business located at 736 Cherry Street, Chattanooga, Tennessee.

- E. Proposed Redevelopment: Hutton will acquire the Property which is a planned outparcel lot of a retail shopping center development, to include a new retail, office, medical clinic, hospitality, commercial, or restaurant facility, paved parking, sidewalks, and landscaping.

CERTIFICATIONS

3. Hutton has certified upon application that: 1) Hutton is not a Responsible Party at the Site, or a parent, successor, or subsidiary of a Responsible Party at the Site and has not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program; 2) its activities will not aggravate or contribute to Existing Contamination on the Site or pose significant human health or environmental risks; and, 3) it is financially viable to meet the obligations under this Contract.

RESPONSE ACTION

4. Hutton agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by Hutton, or designee, within thirty (30) days after execution of this Contract. A Report of the assessment results shall be submitted by Hutton, or designee in accordance with the schedule provided in the initial Work Plan. Hutton acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or control measures on the Property that cannot be anticipated with this Contract. Hutton agrees to perform the additional assessment and/or control measures consistent with the intended uses of the Property under the purview of this Contract; however, Hutton may seek an amendment of this Contract to clarify their further responsibilities. Hutton shall perform all actions required by this Contract, and any related actions of Hutton's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and control measures activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). Hutton shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or control measures activities consistent with the following:
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with Well Standards, 6 S.C, Code Ann. Regs. R.61-71 (2002 & Supp. 2016). The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.
 - c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
 - i. the full EPA Target Analyte List (TAL);
 - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
 - ii. the full EPA Target Compound List (TCL);
 - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);

- ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
 - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
 - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
- d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detection levels, the analytical method shall use the lowest achievable detection levels.
- 6). The Work Plan shall include the names, addresses, and telephone numbers of Hutton's consulting firm(s), analytical laboratories, and Hutton's contact person for matters relating to this Contract and the Work Plan.
- a). The analytical laboratory shall possess applicable Certification defined in the State Environmental Laboratory Certification Program, 7 S.C.Code Ann. Regs. R.61-81 (2012), for the test methods specified in the Work Plan.
 - b). Hutton shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify Hutton in writing of approvals or deficiencies in the Work Plan.
- 8). Hutton, or designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 9). Hutton shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
- 10). Hutton shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the

Department, or its authorized representatives, to take duplicates of any samples if desired.

- 11). Hutton shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. Hutton shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or Professional Geologist duly licensed in South Carolina.
- 2). The Report(s) of assessment and/or control measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All Report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire Report on a compact disk (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). Hutton shall also characterize any Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, control measures, or development activities in accordance with a Department approved plan.

- 2). Upon discovery of any Segregated Source that has not yet released all contents to the environment, Hutton shall expeditiously stabilize or remove the Segregated Source from the Property
- 3). Hutton shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. Hutton shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). Hutton shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). Hutton shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to Hutton, of the well owner or occupant of the residence served by the well.

E. Assess soil quality across the Property:

- 1). Hutton shall collect and analyze soil samples in accordance with the approved Work Plan. Hutton shall collect one surface soil sample (0-1 foot below ground surface) and one subsurface soil sample (4-6 feet below ground surface) from each sampling location.
- 2). Unless otherwise specified in the approved Work Plan, each surface soil sample shall be analyzed for TAL-Metals and SVOCs. Each subsurface sample shall be analyzed for TAL-Metals, VOCs and SVOCs. A minimum of one surface and one subsurface samples from a probable impacted area shall be analyzed for the full EPA-TAL and EPA-TCL.

- 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

F. Assess groundwater quality:

- 1). Hutton shall assess groundwater quality and flow direction across the Property. Assessment shall include samples from existing monitoring wells and monitoring wells to be installed in accordance with the approved Work Plan.
- 2). Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, VOCs and SVOCs. In addition, one down-gradient well pair shall have both samples analyzed for the full TAL/TCL parameters.
- 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, 4 S.C. Code Ann. Regs. 61-58, or, if not specified in R.61-58, to the EPA RSL for "Tapwater."

G. Evaluate and control potential impacts to indoor air:

- 1). Hutton shall evaluate potential impacts to indoor air if the Department determines that the concentrations of VOCs present in the subsurface pose a threat to indoor air quality based on EPA OSWER "Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air" dated June 2015 and supplemental EPA guidance ("Vapor Intrusion Technical Guide"). The Department's decision will be constrained towards predicting residential or commercial exposures consistent with the building construction that is proposed to be used on the Property.
- 2). If a vapor intrusion assessment is required, Hutton shall submit a Vapor Intrusion Assessment Work Plan followed by a report of the results.
 - a). For future buildings, Hutton's evaluation of vapor intrusion risk shall, unless otherwise agreed to by the Department, consist of collection and analysis of a representative number of soil gas samples from the proposed footprint

of buildings to be constructed on the Property over areas potentially subject to vapor intrusion.

- b). Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} cancer risk or a hazard quotient of 1 (or 0.1 as applicable) for non-carcinogens based on an appropriate attenuation factor.
- c). Soil gas sampling results and predicted indoor air concentrations shall be compared to screening levels indicative of a 10^{-6} cancer risk or a hazard quotient of 1 (or 0.1 as applicable) for non-carcinogens based on the Vapor Intrusion Technical Guide.

H. Institute reasonable Contamination control measures:

- 1). Hutton shall remove from the Property and properly dispose of all Waste Materials and Segregated Sources of Contamination in accordance with applicable regulations based on characterization results.
 - a). Hutton shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.
 - b). Subject to Department approval, buried Waste Materials, if present, may be stabilized in place on the Property in a manner that will effectively limit or prevent human exposure and release of contaminants to the environment. If any Waste Materials are to be stabilized in place, Hutton shall propose plans for stabilization of the Waste Materials in a Corrective Measures Plan in accordance with Paragraph 4.1.2 below. Hutton shall also enter into a Declaration of Covenants and Restrictions to document the area of stabilization, and to maintain the stabilization measures in accordance with Paragraph 9 of this Contract.
- 2). Hutton shall take reasonable measures to effectively limit or prevent human exposure to Existing Contamination in any media on the Property. Hutton shall

evaluate options for corrective measures in an Analysis of Brownfields Cleanup Alternatives (ABCA). Upon Department approval of the corrective measures selected in the ABCA, Hutton shall prepare a Corrective Measures Plan. The Corrective Measures Plan shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.

- a). Corrective measures shall be required for Contamination present in any media on the Property with concentrations in excess of appropriate human-health risk-based exposure standards with plausibly complete routes of exposure.
- b). Hutton may request Department approval to conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, Hutton shall submit for Department approval, an overview of risk assessment assumptions including identification of Contamination exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.
- c). Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination. Subject to Department approval, corrective measures may include a land use restriction in accordance with Paragraph 9 (Declaration of Covenants and Restrictions) of this Contract
- d). If required, vapor intrusion control measures shall be designed to effectively mitigate vapor intrusion risk to a 10^{-6} risk for carcinogens and a hazard quotient/hazard index of 1 for non-carcinogens based on current EPA RSLs and guidance on vapor intrusion. All vapor intrusion control measures shall include monitoring to confirm that the vapor mitigation system is effective, and procedures to ensure and document proper and effective operation and

maintenance of the vapor intrusion mitigation system for as long as it is required at the Property. The Department shall give reasonable consideration of data or other demonstration that shows any unacceptable indoor air contaminant concentrations do not result from the subsurface conditions.

- e). Upon completion of any corrective measures, Hutton shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining a Certificate of Completion.
 - 3). In the event that development of the Property will require disturbance of contaminants in soil or groundwater, Hutton shall propose a Media Management Plan. The Media Management Plan shall address management of contaminated media when encountered on the Property, its characterization if necessary for offsite disposal, and identification of the final disposal location for all contaminated media.
 - 4). In the event that corrective measures include engineering controls that must be maintained and monitored for future use of the Property, a Stewardship Plan may be required by the Department. If required, the Stewardship Plan shall identify procedures for management of contaminated media that may be encountered as a result of any disturbance of the engineering controls, and for repair or replacement of the engineering controls.
- I. Monitor and/or abandon the monitoring wells:
- 1). Hutton shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.
 - 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.

- 3). Hutton shall abandon the monitoring well(s) installed pursuant to this contract when the Department determines there are no further needs for those wells. The wells shall be abandoned in accordance with Well Standards, 6 S.C. Code Ann. Regs. 61-71 (2002 & Supp. 2016).

J. Complete required activities in the event of a Responsible Party default:

- 1). There is potential that assessment and response actions will be conducted by Crenshaw Oil Company, Inc. under direction of the SCDHEC Underground Storage Tank Program. Activities conducted by a responsible party under the authority of a VCC may satisfy the requirements in sub-paragraphs 4.C through 4.J above. Therefore, it is agreed that response action completed by Responsible Parties under the direction of the SCDHEC Underground Storage Tank Program may be deemed to satisfy the requirements on Hutton. The Department shall have sole discretion in determining the adequacy of the Responsible Party's response actions towards completing the activities required by this Contract.
- 2). The Department will provide written notification to Hutton if more than 180 consecutive days elapse without substantial progress by the Responsible, or the Department otherwise determines the Responsible Party's activities are inadequate.
- 3). Hutton shall respond in writing within thirty days to the Department's notification with a work plan for completing unfulfilled requirements of this Contract.

HEALTH AND SAFETY PLAN

5. Hutton shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the Department in the form of one electronic copy on compact disk (in .pdf format). Hutton agrees that the Health and Safety Plan is submitted to the Department only for informational

purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Hutton.

PUBLIC PARTICIPATION

6. Hutton and the Department will encourage public participation to implement this Contract as follows:

A. The Department will provide notice, seek public comment, and initiate a thirty (30) day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. § 44-56-750 upon signature of this Contract by Hutton.

B. Hutton shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one (1) day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.

1). The sign(s) will state "Voluntary Cleanup Project by Hutton Indian Land, LLC under Voluntary Cleanup Contract 17-6494-NRP with the South Carolina Department of Health and Environmental Control." The sign(s) shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of Hutton. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".

2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.

3). Hutton shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the sign(s). The photographs shall be submitted to the Department within ten (10) days of erecting the sign(s).

- 4). Hutton agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). Hutton shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, Hutton shall restore the sign(s) within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. Hutton shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within 90 days of the execution date of this Contract and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
 - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
 - B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

SCHEDULE

8. Hutton shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. Hutton shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. Hutton or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property if Contamination exceeds levels acceptable for unrestricted use after completing the response actions pursuant to this Contract, or if otherwise required per Paragraphs 4.H.1.c. or 4.H.2.c of this Contract. Contaminant levels acceptable for unrestricted use shall be the Screening Levels for Resident Soil as specified in the EPA RSLs for soil, and the primary MCL standards for groundwater in the State Primary Drinking Water Regulations, 4 S.C. Code Ann. Regs. 61-58. The recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:
 - A. The Department shall prepare and sign the Declaration prior to providing it to Hutton. An authorized representative of Hutton or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
 - B. Hutton or its Beneficiaries shall record the executed Declaration with the Registrar of Deeds or Mesne Conveyance for the county where the Property is located.
 - C. Hutton or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall

show the date and Book and Page number where the Declaration has been recorded.

- D. In the event that Contamination exceeds levels acceptable for unrestricted use (EPA RSLs for residential use and/or MCLs) on a portion of the Property, Hutton or its Beneficiaries may create a new parcel of that portion of the property that will be subject to the Declaration.
- E. The Declaration shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- F. The Declaration shall reserve a right of entry and inspection for Hutton or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). Hutton or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.
 - 2). Hutton or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. The Declaration shall provide that the Department has an irrevocable right of access to the Property after Hutton acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.

- H. Hutton or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.
- I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the EPA RSL Summary Table in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the EPA RSL Summary Table. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

NOTIFICATION

10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

A. All correspondence, notices, work plans, and reports shall be submitted to:

Alex Fulmer
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. All correspondence and notices to Hutton shall be submitted to Hutton's designated contact person who as of the effective date of this Contract shall be:

Geoff Smith, President
Hutton Indian Land, LLC
726 Cherry Street
Chattanooga, TN 37402

FINANCIAL REIMBURSEMENT

11. Hutton or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. Code Ann. § 44-56-750(D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to Hutton on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

Geoff Smith, President
Hutton Indian Land, LLC
726 Cherry Street
Chattanooga, TN 37402

- A. Failure to submit timely payment for costs upon receipt of the Department's invoice is grounds for termination of the Contract pursuant to paragraph 16 herein.
- B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph 16 herein.

ACCESS TO THE PROPERTY

- 12. Hutton agrees the Department has an irrevocable right of access to the Property for environmental response matters after Hutton acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

- 13. A Certificate of Completion shall be issued to Hutton or its Beneficiaries for the Property under this Contract as follows:
 - A. Hutton or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
 - B. Pursuant to § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that Hutton or its Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. §§ 44-56-710 through 760.

- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been recorded but all actions under this Contract have not been completed due to Property-specific circumstances.
- 1). A Provisional Certificate of Completion will include specific performance standards that Hutton or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if Hutton or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. Hutton or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after redevelopment of the Property is complete. Hutton shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of the Department, Hutton, and its Beneficiaries as set forth below. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:

- A. Hutton or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. Hutton and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property allowing residential occupancy.
- C. If the Certificate of Completion has not been issued, Hutton or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:
- 1). Is not a Responsible Party for the Site;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract; and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.
- D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, Hutton or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty (30) days after the effective date of the ownership change or other possessory transfer of the Property.
- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the

Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.

- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual commercial use provided the Declaration is noted on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

- E. If a Certificate of Completion has been issued and the Property is not subject to a Declaration or other continuing obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. Hutton, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty (30) days advance written notice to the other party. Termination shall be subject to the following:

- A. The Department may not terminate this Contract without cause and before termination, shall provide Hutton or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms and conditions of this Contract;
- 2). Change in Hutton's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of Hutton or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by Hutton or its Beneficiaries;

- 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
 - 6). Failure by Hutton or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
 - 7). Failure by Hutton or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of Hutton's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should Hutton or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by Hutton or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.
- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of Hutton or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue for any party

who has received protections through a Certificate of Completion for this Contract, and who did not participate in the actions giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. Hutton and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from contribution claims under CERCLA § 113, 42 U.S.C. § 9613 and SCHWMA § 44-56-200.
- 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
- 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to the Income Tax Act, S.C. Code Ann. § 12-6-3550 (2014).

B. Effective on the date the Certificate of Completion is issued by the Department.

- 1). The Department's covenant not to sue Hutton and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by Hutton or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by Hutton or its Beneficiaries. The Department retains all rights under State and Federal laws to compel Hutton and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by Hutton or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than Hutton and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than Hutton and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY HUTTON

19. Hutton retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. Hutton and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute. However, Hutton and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. Hutton and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by Hutton or its Beneficiaries. Hutton and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY HUTTON AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, Hutton and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

[Remainder of page left blank]

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY:

DATE:

Daphne G. Neel, Chief
Bureau of Land and Waste
Management

DATE:

Reviewed by Office of General Counsel

HUTTON INDIAN LAND, LLC

BY:

DATE:



9/13/17


Geoff Smith, President



APPENDIX A

Application for Non-Responsible Party Voluntary Cleanup Contract

Hutton Indian Land, LLC

August 28, 2017